

FILED

FEB 22 2007

FACTUAL RESUME

UNITED STATES OF AMERICA v. JOSHUA HEATH ZUNIGA CLERK, U.S. DISTRICT COURT
NO. 5:06-CR-067-C- LUBBOCK DIVISION - NORTHERN DISTRICT OF TEXAS
Deputy

INDICTMENT: TO BE ARRAIGNED ON COUNT EIGHT OF
INDICTMENT - Charging a violation of 18 U.S.C.
§ 2252A(a)(5)(B) - Possession of Child Pornography.

MAXIMUM PENALTY: A term of imprisonment of not more than ten years, a fine of not more than \$250,000.00, or both. A term of supervised release of up to life must follow any term of imprisonment. If the defendant violates the conditions of supervised release, he could be imprisoned and subject to additional terms of supervised release and imprisonment as determined by the court in accordance with law.

MANDATORY
SPECIAL
ASSESSMENT: \$100.00

PLEA AGREEMENT: As set forth in the Plea Agreement letter attached hereto and incorporated herein.

ELEMENTS OF
THE OFFENSE: **18 U.S.C. § 2252A(a)(5)(B). Possession of Child Pornography:**

Defendant Joshua Heath Zuniga:

1. On or about the date charged in the indictment;
2. knowingly possessed;
3. child pornography;
4. that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer.

“Child pornography” means any visual depiction of sexually explicit conduct where such visual depiction is of a minor engaging in sexually explicit conduct.

A “minor” is any person under the age of eighteen years.

“Sexually explicit conduct” means:

- (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (B) bestiality;
- (C) masturbation;
- (D) sadistic or masochistic abuse; or
- (E) lascivious exhibition of the genitals or pubic area of any person.

FACTS:

Beginning in or about June, 2005, Joshua Heath Zuniga initiated a sexual relationship with "Jane Doe", a female child who was then 13 years of age. "Jane Doe" was related to Zuniga, being Zuniga's half niece. Beginning in the summer months, and continuing through early December, 2005, Zuniga and Doe communicated over the Internet, and by telephone. Although the communications often related to general life issues, including assistance with homework, the communications also included sexually explicit conversations. In some of the conversations, Zuniga encouraged Doe to take sexually explicit images of herself, and to send them to Zuniga. In November, 2005, Zuniga visited Lubbock from his home in the Houston, Texas, area, and during the visit, Zuniga set up a computer in Doe's bedroom. The computer had been given to Doe by Zuniga's parents. Zuniga also set up a webcam, which Doe already owned, but had been unable to use. Upon Zuniga's return to the Houston area, Doe, at Zuniga's request, used the webcam to record a sexually explicit video in which she danced nude in her bedroom. Between on or about November 24, 2005, and December 5, 2005, Doe sent the video to Zuniga by way of the Internet. After Zuniga received the sexually explicit video of Doe, he copied it from his computer to his Lexar 128 MB flash drive, number JDE128-04-500.

In early December, 2005, Zuniga became aware that Doe's family had learned of the inappropriate relationship between himself and Doe, as Doe's parents had found a copy of the sexually explicit video on Doe's computer. Zuniga deleted the video, as well as other material that would have revealed the relationship between Zuniga and Doe, from his computer. Between on or about December 7, 2005, and on or about December 27, 2005, Zuniga moved from the Houston area to Frisco, Texas, traveling through the Northern District of Texas. At the time of the move, Zuniga transported his computer, as well as the flash drive that contained the sexually explicit video of Doe, which he intentionally and knowingly possessed.


The above facts are true and correct:



JOSHUA HEATH ZUNIGA
Defendant

2/22/07

Date



MARK EIGLARSH
Attorney for Defendant

2/22/07

Date